

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6792 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE

In the Matter of:

JOYCE E. SLY
(Claimant-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-354

S.S.A. No. .

| |
|--|
| FORMERLY BENEFIT DECISION NO. 6792 |
|--|

SANITARY DISPOSAL COMPANY
(Employer-Appellant)

Employer Account No. (Not shown)

The employer appealed from Referee's Decision No. S-31712 which dismissed the employer's appeal as untimely filed without good cause under the Unemployment Insurance Code.

STATEMENT OF FACTS

On March 3, 1966 the Department of Employment mailed to the employer notices of ruling and determination which were adverse to the employer. Because the tenth day following March 3, 1966 was a Sunday, the notices specified that they were final unless an appeal was filed on or before Monday, March 14, 1966.

The office manager for the employer testified, and the referee in his findings of fact specifically found, that the appeal was deposited in a United States Post Office mail box in the late afternoon of March 14, 1966. The appeal was properly addressed; had the proper postage affixed; and was postmarked March 15, 1966, 1 p.m. The referee dismissed the appeal on the ground that it was not filed within the appeal period and that good cause did not exist for the delay because the office manager could have filed the appeal several days earlier but waited to file it on the last day.

Decision No. 6338, we held that a telegram deposited with the telegraph office on the final day to file an appeal was timely filed, stating:

"As has been observed, the board's rules provide in effect that a mailed appeal is considered filed on the date it is placed in the mail. In our opinion, a similar conclusion should be reached with respect to an appeal transmitted through a telegraph company. . . ."

In Benefit Decision No. 5625, we held that an appeal was timely when it was deposited in the mail on the tenth day but was postmarked the eleventh day. Subsequently, in Benefit Decision No. 5666, the same circumstances occurred and we overruled Benefit Decision No. 5625 insofar as it held that the claimant had filed a timely appeal and held that the appeal was untimely but that good cause existed for the one-day delay. We reached a similar conclusion in Benefit Decision No. 5730 referring specifically to a provision in the California Administrative Code that an appeal to a referee "shall be deemed filed on the postmark date shown on the envelope in which it was mailed." In Benefit Decision No. 6021 we again held that the appeal filed on the tenth day but postmarked the eleventh day was untimely but that good cause existed for extending the time limitation, referring both to Benefit Decision No. 5666 and the provision in the California Administrative Code. We reached a similar result in Benefit Decision No. UCV-7, citing Benefit Decision No. 5730.

Effective February 19, 1966, we adopted new rules governing the filing of appeals and the conduct of hearings under the Unemployment Insurance Code. With respect to the date when an appeal is filed, both to a referee and to this board, we provided in sections 5024 and 5104 of Title 22 of the California Administrative Code that an appeal " . . . shall be deemed filed on the date it is delivered or mailed The mailing date shall be presumed to be the postmark date appearing on the envelope if the postage was prepaid and the envelope was properly addressed. . . ." The rules formerly provided that an appeal was "deemed filed on the date it is delivered . . . or if an appeal is mailed it shall be presumed filed on the postmark date appearing on the envelope in which it was mailed. . . ."

In view of our recent change in our rules to provide that the appeal is deemed filed when it is mailed, and in accordance with the general law on this subject and other specific provisions in the Unemployment Insurance Code, we hold that the appropriate rule is that an appeal is filed at

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6792 is hereby designated as Precedent Decision No. P-B-354.

Sacramento, California, June 2, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

CARL A. BRITSCHGI

DISSENTING OPINION

I dissent.

Assuming for the moment that the minor issue posed herein is valid in view of the wealth of law handed down by the judiciary, no useful purpose is served by elevating the instant case to precedent status.

I will concur in the ultimate conclusions reached that an appeal is timely filed if deposited in the mail within the time limits imposed. However, the consideration given this case, which was issued in 1966, ignores the fact that both the statute and the regulations have since been amended.

If the issue posed, which has been observed by this Board consistently, requires clarification, there are sufficient cases currently submitted not only to the area Offices of Appeals but to the Appeals Board itself which could be utilized, thus eliminating the necessity of so dignifying an earlier and outdated decision. For such reasons I oppose the proposed elevation of the instant decision.

CARL A. BRITSCHGI